

J. H. asks the Utah Labor Commission to review Administrative Law Judge George's decision regarding Mr. Hall's claim for benefits under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

On January 3, 2002, Mr. H. filed an application for workers' compensation benefits against Consolidated Freightways and its insurance carrier, Fidelity & Guarantee Insurance (referred to jointly as "Consolidated" hereafter). In lieu of an evidentiary hearing, Mr. H. and Consolidated submitted a stipulation of facts and agreed that a medical panel should evaluate Mr. H.'s claim.

The medical panel submitted its report on March 24, 2004, concluding that Mr. H.'s work at Consolidated had caused "thoracic outlet syndrome," but the syndrome had resolved with no permanent impairment and no need for additional medical treatment. The panel also stated that "the evidence does not support any period of total temporary disability. [Mr. Hall] would have been capable of modified duties from the outset."

On November 30, 2004, Judge George adopted the medical panel's report and, on that basis, concluded Mr. H. was not entitled to any workers' compensation benefits beyond what he had already received. Specifically addressing Mr. H.'s claim for temporary disability compensation, Judge George stated that "since [Mr. Hall] was capable of modified duties from the outset, no compensation for any time off work in the form of temporary total disability is appropriate, and that claim should be denied and dismissed with prejudice."

Mr. H. requested Commission review of Judge George's decision. Mr. H. pointed out that, even if he had been able to perform light duty work while recovering from his thoracic outlet syndrome, there was no evidence that Consolidated had actually made light duty work available to him. Judge George did not refer Mr. H.'s motion for review to the Commission, but instead held an evidentiary hearing on December 21, 2005, to determine whether Consolidated had made light duty work available to Mr. Hall. On January 4, 2006, Judge George issued a supplemental decision awarding temporary total disability compensation to Mr. H. for the period between October 29 and December 18, 2001.

Mr. H. now seeks Commission review of Judge George's supplemental decision. Mr. H. contends Judge George erred in not extending temporary total disability compensation to May 27, 2002, the date Mr. H. was released to full duty work by his physician.

DISCUSSION AND CONCLUSION OF LAW

There is no question that Mr. H.'s thoracic outlet syndrome constitutes a work-related injury

and, as such, is covered by the Utah Workers' Compensation Act. The only dispute is the extent to which Mr. H. qualifies for a particular type of workers' compensation benefit--temporary total disability compensation—that is provided by the Act.

The operative provision of the Act governing temporary disability compensation is found in § 34A-2-410(1)(a): "In case of temporary disability, **so long as the disability is total**, the employee shall receive 66-²/₃% of that employee's average weekly wages at the time of the injury" (Emphasis added.)

In *Entwistle v. Wilkins*, 626 P. 2d 495, 498 (Utah 1981), the Utah Supreme Court discussed the meaning of the term "total disability" as used in § 34A-2-410(1)(a):

As applied to the issue under consideration here, "total disability" does not mean a state of abject helplessness or that the injured employee must be unable to do any work at all. The fact that an injured employee may be able to do some kinds of tasks to earn occasional wages does not necessarily preclude a finding of total disability to perform the work or follow the occupation in which he was injured. **His temporary disability may be found to be total if he can no longer perform the duties of the character required in his occupation prior to his injury.** (Footnotes omitted; emphasis added.)

In applying this standard to Mr. H.'s claim, it is necessary to determine the duties that were required by Mr. H.'s employment prior to his work injury, and whether the work injury prevented him from performing those duties. According to the stipulated facts, Mr. H. was a long haul truck driver prior to his injury. He did not participate in loading or unloading trucks. On October 29, 2001, as a result of Mr. H.'s work-related thoracic outlet syndrome, Mr. H.'s physician instructed him to discontinue driving until his symptoms resolved. Then, as of December 18, 2001, Mr. H. was permitted to return to his usual work duties. Approximately one month later, Dr. Petron concluded Mr. H. could work full time, with restrictions against lifting more than 20 pounds or repetitive overhead motion.

Based on the foregoing facts, the Commission concludes Mr. H. was able to resume his usual work duties by December 18, 2001. While he may have continued to suffer from some limitations as indicated by Dr. Petron, those continuing limitations did not prevent him from fully performing his regular duties. Consequently, after December 18, 2001, Mr. H. was not longer temporarily totally disabled.

The Commission notes Judge George's extensive discussion of whether Consolidated had light duty work available to Mr. H. after December 18, 2001. Because Mr. H. was able to return to his regular duties by that date, the Commission finds it unnecessary to consider this question of light duty work.

ORDER

For the reasons stated herein, the Commission affirms Judge George's conclusion that Mr. H. is not entitled to temporary total disability compensation after December 18, 2001. The

Commission therefore denies Mr. H.'s motion for review. It is so ordered.

Dated this 28th day of February, 2006.

R. Lee Ellertson
Utah Labor Commissioner